IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

**Civil Revision Nos. 90 and 91 of 2007.**

**Date of Decision: 9th July , 2007.**

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**Nand Lal Sharma** **…..Petitioner.**

**Versus**

**Smt Bimla Sharma** **……Respondent.**

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Coram

***The Hon'ble Mr. Justice Dev Darshan Sud,Judge.***

Whether approved for reporting?[1]

For the Petitioner: Mr. Dinesh Kumar Sharma, Advocate.

For the Respondents: Mr. Tarlok Chauhan, Advocate.

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**Dev Darshan Sud, Judge.**

This is the tenant's revision under Section 24 (5) of the H.P. Urban Rent Control Act (hereinafter referred to as 'the Act) against the judgment of eviction passed by the Rent Controller and affirmed in appeal by the Appellate Authority. The respondent who is the land lady, preferred an eviction petition under Section 14 of the Act against the petitioner on the ground that the petitioner who was the tenant in one room in the building owned by the respondent-land lady at a monthly rent of Rs. 800/- per month since August, 1994 is in arrears of rent and the premises occupied by the petitioner are required bonafide by the

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

respondent for her own occupation. The land lord pleaded that she being the widow was being harassed by the petitioner who had withheld the payment of rent and further that she required the same for her personal bonafide requirement. The petition was resisted by the petitioner-respondent on a number of grounds. Four issues were framed by the Rent Controller for determination excluding the issue of relief. First issue was whether the petitioner is in arrears of rent @ 800/- per month w.e.f. August, 1994; second whether the premises were required bonafide by the land lady-respondent for her personal use and occupation; third whether the petition was not maintainable as alleged by the petitioner; fourth whether the respondent was estopped from filing the petition by her own acts conducts etc. The first issue was held partly in favour of the land lady and the other issues decided against the petitioner-tenant. While considering the question of arrears of rent, the Rent Controller held that he is in arrears of rent w.e.f. Ist September, 1999 @ 500/- per month. On the issue regarding the bonafide requirement, the Rent Controller held that the respondent- land lady had limited accommodation and considering the requirement of the land lady and her socio-economic status, the premises was required by her bonafide for her use as pleaded by her. The Rent Controller noted that according to the admission of the petitioner himself, the premises in possession of the land lady were two rooms, kitchen, bath room and a toilet which was not sufficient for her needs. She was working as Superintendent in the department of education, her brother was also living with her, her relations were visiting her over now and then and her daughter, who was married during the pendency of the petition, was visiting her. It was also accepted that her son-in-law was in Solan and her

grand children were also studying there. They were also visiting the respondent and often staying with her. On the third issue regarding the maintainability, the Trial court held that there was not even an iota of evidence on record suggesting the non-maintainability of the petition. The court further observed that no argument was advanced on this point. On the fourth issue also Rent Controller noticed that there was nothing on the record to suggest that the petition was barred by principles of estoppel or acts on the part of the land lady.

Appeal against the judgment was carried by the petitioner-tenant to the court of appellate authority which noticed in detail not only grounds of appeal raised by the petitioner which were reproduced in detail in the judgment and held that on the question of non-payment of rent, the admission of the petitioner before the Rent Controller was that he had paid the rent up to April, 1998 and without any other evidence the only conclusion was that he was in arrears of rent from 1.6.1998 and to this extent the finding of the Rent Controller were wrong. On the second ground regarding the bonafide requirement, after appraisal of the evidence on the record, the Appellate Authority held that the land lady had established her requirement on the record of the case and there was no material or evidence to suggest that the requirement was not bonafide or that the petition was motivated by malafidies. The appeal was accordingly dismissed.

In this revision, learned counsel for the petitioner has urged that the courts below have erred in entertaining the petition as it was barred under Section 14 (3) (a) (i) as the land lord had not proved the mandatory requirement of the second Proviso to this section which stipulates that

eviction can be ordered if the land lord has not vacated such a building without sufficient cause within five years of the filing of the petition in the said urban area. His submission is that the factum of renting out one room to the petitioner constituted an act which can be construed in law as vacating the premises without reasonable cause. Creating tenancy in favour of the petitioner in one part of the building was equivalent in law to vacating the same. Section 14 (3) reads as under:-

> "14(3) A land lord may apply to the Controller for an order directing the tenant to put the land lord in possession:-
> (a) in the case of a residential building, if-…….-
> (i) He requires it for his own occupation:
> Provided that he is not occupying another residential building owned by him in the urban area concerned:
> Provided further that he has not vacated such a building without sufficient cause within five years of the filing of the application, in the said urban area; or"

To substantiate his case he has placed reliance on a judgment reported in **Onkar Nath vs. Ved Vyas, ILR 1978 HP 58** dealing with the provisions of Section 13 of the East Punjab Urban Rent Control which are in pari materia with the provisions of the Himachal Pradesh Urban Rent Control Act. Learned counsel submits that para 10 and 11 of the judgment lay down that the provisions have to be read conjointly. The relevant portion of the judgment is:-

> "10. In view of this position of law, the first question which arises to be considered is whether clauses (b) and (c) of Section 13 (3) (a) (i) operate as a condition precedent for the cause of action or not. If the facts relating to these two clauses are construed to be conditions precedent then it

would be for the tenant to raise a plea that these conditions precedent are not performed by the land lord, and so long as he does not arise this plea the performance of these conditions precedent should be implied in the pleadings. However, if the facts relating to clauses (b) and (c) do not operate as conditions precedent, but are construed as material facts relating to the cause of auction itself, then these material facts must be pleaded in the plaint.

11. If a reference is made to the provisions contained in Section 13 (3) (a) (i), it will be found that it stipulates the requirement of the rented premises for the landlord's own use and occupation. Clauses (b) and (c) are enacted by way of tests of these requirements because according to clause (b) if a landlord is occupying any other residential building in the urban area concerned, and if such other residential building is quite suitable for his purpose as held by several decisions, then it will follow that he does not require the disputed premises for his personal use. Similar are the requirements even of clause (c) because the effect of clause (c) is that if the landlord has vacated a building such as the disputed building without sufficient cause in the same urban area after the commencement of the Act, then it cannot be said that he requires the disputed premises for his personal use. It is thus evident that clauses (b) and (c) form an integral part of clause (a) and in order to determine whether there is a bonafide personal requirement of the landlord, we have to read all the three clauses conjointly together as was done by the Supreme Court in *Attar Singh vs. Inder Kumar (AIR 1967 SC 773)* with regard to similar provisions contained in Section 13 (3) (a) (ii) of the Act. In my opinion, therefore, clauses (b) and (c) form an integral part of the whole cause of action arising from personal requirement of a land lord, and if that be so, it must follow as a necessary corollary that all the facts relating to clauses (b) and (c) are material facts relating to

> the cause of action and they should be pleaded in the plaint as required by rule 2 of the Order 6 of the Code of Civil Procedure."

Learned counsel submits that this case has been affirmed by the Hon'ble Supreme Court in **Onkar Nath vs. Ved Vyas, 1980 (4) SCC 270.**

I have heard learned counsel for the parties. The eviction petition filed by the petitioner clearly avers that the petitioner has not vacated any building without any sufficient cause within five years of the filing of the said petition. In Column 18 (a) of the petition it is averred:-

> 18(a) I. The respondent has not been paying monthly rent @ 800 per month since August, 1994 despite various requests from the side of the petitioner. The rent has been withheld in order to cause economical physical and mental loss to the petitioner.
>
> II That the petitioner requires the premises for her own use and occupation. The petitioner has not been occupying another residential building owned by her in the Urban area concerned with in MC. limits of Solan. The petitioner has not vacated any building without sufficient cause within five years of filing of the present petition in the said urban area. The need of the petitioner is bonafide as the petitioner has been living in one room in the building and the remaining rooms is in the occupation of the daughter Nisha and the 3rd room is occupied by the brother of the petitioner who is living with his wife and children and the petitioners' father and her relatives visits the petitioner and the petitioner is put to hardship and inconvenience due to insufficiency of the accommodation and the petitioner requires premises bonafidely for her use and occupation due to the scarcity of the accommodation".

In reply there is a vague denial by the petitioner. He has been unable to point out the lack of pleading or evidence on the record to show that the land lady had vacated any building in the urban area without sufficient cause. The only building occupied by the petitioner is the one owned by her which is the subject matter of the present petition. In fact, if the evidence of the petitioner is considered, she was living in the house along with her father, brother and other family members after the death of her husband and it was for economic want she had rented out one room to the petitioner. The submission made by the petitioner that such requirement of law has not been satisfied and that mere fact of renting out one room constitutes vacation without sufficient cause cannot be accepted. This would be placing an interpretation on the provision which would lead to absurd results This submission is therefore, rejected. The second point urged by the learned counsel for the petitioner is that the grounds of appeal which has been raised before the appellate authority have not been considered. There is no merit in the submission of the learned counsel as the Appellate Authority has considered the points urged. The petitioner cannot be allowed to controvert the court record and urge contrary to what has been recorded in the judgment. A number of grounds are raised in pleadings but only some are urged for consideration. If this plea is allowed or accepted it would encourage litigation and every litigant resorting to this plea can clog the wheels of justice. Learned counsel for the respondents submits that as a Revisional Court, the findings of fact cannot be gone into by this Court. He relies upon **Atma S. Berar vs. Muthtiar Singh 2003 (2) SCC 3** holding that:-

"9. *In Ram Dass Vs. Ishwar Chander & Ors., (1988) 3 SCC 131,M.N. Venkatachaliah, J.* (as His Lordship then was) speaking for the three-Judges Bench, said *(SCC pp. 134-35, para 11)*

"Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the bona fide requirement of the landlord, variously described in the statutes as "bona fide requirement", "reasonable requirement", "bona fide and reasonable requirement" or, as in the case of the present statute, merely referred to as "landlord requires for his own use". But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a "requirement" in law must have the objective element of a"need". It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down."

10. In *Gulabbai Vs. Nalin Narsi Vohra & Ors., (1991) 3 SCC 483,* reiterating the view taken in *Bega Begum Vs. Abdul Ahad Khan, (1979) 1 SCC 273,* it was held that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.

11. Recently, in Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222, this Court in a detailed judgment, dealing with this aspect, analysed the concept of bona fide requirement and said that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself ___ Whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest? If the answer be in positive, the need is bona fide. We do not think that we can usefully add anything to the exposition of law of requirement for self occupation than what has been already stated in the three precedents.

13. Simply because a different Judge of Court of facts could have been persuaded to change opinion and draw a different inference from the same set of facts is not the jurisdiction of a revisional authority to upset pure finding of fact. Precedents galore were cited by the learned senior counsel for the parties dealing with jurisdiction of revisional court to interfere with findings of fact. In all fairness to the learned counsel, we may refer to a few of them.

14. The object of conferring revisional jurisdiction on the High Court, by sub-Section (5) of Section 15 of the Act, is to enable it satisfying itself as to the legality or propriety of an order made by the Controller or the proceedings before him. In *Ram Das Vs. Ishwar Chander and Ors. (1988) 3 SCC 131* it was held that the nature and scope of revisional jurisdiction conferred on the High Court shall have to be determined on the language of the Statute investing the jurisdiction. In *Prativa Devi Vs. T.V.*

*Krishnan (1996) 5 SCC 353* a three-Judge Bench held that the revisional power referable to Section 25-B(8) of Delhi Rent Control Act, 1958 is not as narrow as the revisional power under Section 115 of the CPC and it is also not so wide as an appellate power. Having kept the legal principles in view and on an objective determination and on a proper appreciation of the evidence in the light of the surrounding circumstances a conclusion as to the need of the demised premises for user by the landlord and his bona fides shall not be liable to be interfered with in exercise of revisional power. In *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta (1999) 6 SCC 222* this Court made a comparative study of the provisions contained in section 115 CPC in juxtaposition with Section 25-B(8) of Delhi Act and held that the High Court cannot appreciate or reappreciate evidence dictated by its mere inclination to take a different view of the facts as if it were a court of facts. A conclusion arrived at which is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available, ignoring the weight of evidence, proceeding on a wrong premise of law or deriving such conclusions from the established facts as betray a lack of reason and/or objectivity would render the finding 'not according to law' calling for an interference under Section 25-B(8) proviso by the High Court. *Mudigonda Chandra Mouli Sastry Vs. Bhimanepalli Bikshalu and Ors.- (1999) 7 SCC 66* and *Lekh Raj Vs. Muni Lal and Ors. (2001) 2 SCC 762* take the same view. The scope of revisional jurisdiction under Section 15(5) of the Act is similar, that is, confined to testing the legality or propriety of order or proceedings of Controller."

He further places reliance upon**, Kailash Chand and another vs. Dharam Dass,2005 (5) SCC 375** involving the

interpretation of the provisions of the Act it has been held by the Supreme Court:-

> "20. What is the scope of the first Proviso? Whether the occupation by landlord of any other residential accommodation of whatever nature, in abstract and without consideration of any other relevant factor would be enough to attract the applicability of the first Proviso and to deny the landlord his right to seek an order of eviction against the tenant? In our opinion, the first Proviso is not to be read in isolation. It has to be read along with the principal provision to which it is appended. The ground for eviction in the case of a residential building is "he requires it for his own occupation". If the pleadings and the evidence adduced by the landlord do not make out a case of requirement, there would be no question of the tenant being directed to put the landlord in possession. Even on the requirement having been proved, the landlord would be denied the order for possession from the tenant because of his being in occupation of 'another residential building owned by him in the same urban area'. The occupation of another residential building, to act in denial of the landlord's right to evict the tenant to satisfy his requirement, must have correlation with the requirement of the landlord. To illustrate, another residential building in occupation of the landlord may be crumbling, or may be in dilapidated condition or may consist of very little residential space, say one small room alone, which it would be misnomer to call availability of a residential building in occupation of the landlord by any stretch of imagination. The legislature could not have intended such an absurd and unreasonable consequence to follow. In our opinion, the first Proviso would come into play only if the landlord is occupying another residential building of his own in the

same urban area and such building is considered by the Court as reasonably enough and suitable to satisfy the proven requirement of the landlord. Hence, the first Proviso would not apply in the case before us. It is impractical and unreasonable to hold that the accommodation which is already fully occupied and actually in use of appellant No.2, though technically in occupation of both the landlords can satisfy the requirement of appellant No.1 and his family as well. Rightly the tenant has not urged the plea that the landlord being in occupation of other parts of the building excluding the portion in occupation of the tenant would attract applicability of the first proviso so as to disentitle the landlord from seeking his eviction on the ground of requirement of appellant No. 1 who is actually living in a rented house.

21. We have to see if the landlords' entitlement to evict the tenant can be faulted by reference to the second proviso. For two reasons we are of the opinion that the applicability of the second proviso is also not attracted so as to disentitle the landlord-appellants from seeking eviction of the tenant-respondent. First, the landlords cannot be said to have 'vacated' any building. It is not the case of the tenant, pleaded or proved, that the accommodation which was given to the tenant by way of settlement in the earlier round of litigation was in actual occupation of the landlords. If the accommodation was non-residential (though the tenant agreed to use it for his residence) or was already and genuinely lying vacant as of no use to the landlords and not deliberately or mala fide kept vacant to create a false ground for eviction, it cannot be said that the landlords had 'vacated' a residential building. **It is for the tenant to raise and substantiate the plea attracting applicability of the proviso so as to disentitle the landlord from evicting**

**him in spite of the requirement having been proved. On the tenant having pleaded and proved that the landlord has vacated another residential building in the same urban area within five years of the filing of the application, the onus will shift again on the landlord to either rebut the plea or to prove sufficient cause for such vacating. In the present case, there is complete lack of pleadings and evidence so as to enable a finding of fact being recorded which would attract applicability of the second proviso.**

22. Secondly, 'sufficient cause' is also discernible from the facts available on record in the present case. As held in *Surinder Singh Sibia's case (supra),* 'Sufficient cause' "has been construed liberally in keeping with its ordinary dictionary meaning as adequate or enough. That is, any justifiable reason resulting in vacation has to be understood as sufficient cause. For instance economic difficulty or financial stringency or family reasons may compel a landlord to let out a building in his occupation. So long as it is found to be genuine and bona fide it would amount to vacating a building for sufficient cause and the bar of second proviso stands lifted. In other words if the vacation of the building was not a pretence or pretext the proviso could not frustrate the right of landlord to approach the Controller for necessary direction to tenant to hand over possession to him."

24 The expression 'his own occupation' as occurring in sub-clause (i) of clause (a) of section (3) is not to be assigned a narrow meaning. It has to be read liberally and given a practical meaning. 'His own occupation' does not mean occupation by the landlord alone and as an individual. The expressions "for his own use" and "for occupation by himself" as occurring in two other Rent Control Acts, have come up for the consideration of this Court in *Joginder Pal v. Naval Kishore Behal, (2002)*

> *5 SCC 397* and *Dwarkaprasad v. Nirnajan and Another, (2003) 4 SCC 549.* It was held that the requirement of members of family of the landlord or of the one who is dependent on the landlord, is the landlord's own requirement. Regard will be had to the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region to which the landlord belongs, while interpreting such expressions. The requirement of the family members for residence is certainly the requirement by the landlord for 'his own occupation." *(emphasis supplied)*

There can be no doubt that the findings of fact can be interfered with when a perverse findings have been given based on no evidence at all or conclusions totally contrary to the evidence on record. There is no material to indicate such a situation in this case. The tenant has also failed to establish that the petition has been filed malafide. The tenant, has not only filed pleadings in the nature of vague general denials but also failed to hint in his evidence that there are any other evidence to support his contention. The land lord cannot be non suited on some pedantic interpretation of the provision as urged. There is not even an iota of evidence on the record to show that the land lady had some other premises which were vacated by her or that her need was not bonafide.

In the facts and circumstances of the case, the findings arrived at by the Rent Controller and the Appellate Authority cannot be faulted with. There is no perversity of appreciation of evidence or application of law. This revision is dismissed. There shall be no order as to costs.

**9th July, 2007.** **(Dev Darshan Sud),**
(cm) **Judge.**